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ex rel. Bill Lockyer, Attorney General

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*
BILL LOCKYER, ATTORNEY GENERAL,

Plaintiffs,

v.

CORAL POWER, L.L.C., a Delaware LLC, and
DOES 1-100,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL
PENALTIES (BUSINESS AND
PROFESSIONS CODE § 17200)**

The People of the State of California, *ex rel.* Bill Lockyer, Attorney General, allege the
following on information and belief:

1 **I. INTRODUCTION**

2 1. In January, 2001, the Governor of the State of California declared a state of
3 emergency because of the energy crisis in the State. Skyrocketing electricity prices and supply
4 shortages resulted in widespread blackouts, utility bankruptcy, and massive economic upheaval.
5 Defendant Coral Power, L.L.C. (“Coral”), through unjust, unreasonable, and illegal overcharges
6 and price gouging received unprecedented profits at the expense of consumers, ratepayers,
7 businesses, and the State of California. Coral’s profiteering and other unlawful and unfair
8 business practices resulted in hundreds of millions of dollars of overcharges and illegal profits.

9 2. This action, under section 17200 of the Business and Professions Code, based on
10 unlawful rates charged by Coral, seeks to redress those wrongs. Each and every one of the
11 thousands of unjust and unreasonable rates charged by Coral was an act of unfair competition,
12 subject to civil penalties. In addition, each of the thousands of rates charged by Coral, but not
13 filed with the Federal Energy Regulatory Commission (“FERC”), was an act of unfair competition
14 subject to civil penalties.

15 **II. PARTIES**

16 3. Plaintiffs are the People of the State of California, ex rel. Attorney General of
17 California, Bill Lockyer. Business and Professions Code section 17200 provides that actions to
18 prohibit any unfair and unlawful business practices or acts may be brought by the Attorney
19 General in the name of the People of the State of California.

20 4. Defendant Coral Power L.L.C. is a Delaware LLC that, at all relevant times,
21 marketed and sold electricity in the California markets.

22 5. The true names and capacities of defendants stated in this Complaint under the
23 fictitious names of Does 1 through 100, inclusive, are unknown to plaintiffs, who sue such
24 defendants by such fictitious names. Each of the fictitiously named defendants is responsible in
25 some manner for acts, occurrences, or omissions which caused the violations of law alleged
26 herein.

27 6. Unless otherwise alleged, whenever reference is made in this Complaint to any act
28 of the defendants, such allegation shall mean that each defendant acted individually and jointly

1 with the other defendants named in the Complaint.

2 7. Unless otherwise alleged, whenever reference is made in this Complaint to any act
3 of any corporate or other business defendant, such allegation shall mean that such corporation or
4 other business defendant did the acts alleged in this Complaint through its officers, directors,
5 employees, agents, and/or representatives while they were acting within the actual or ostensible
6 scope of their authority.

7 8. At all relevant times alleged in this Complaint, each of the defendants has acted as
8 an agent, representative, or employee of each of the other defendants and has acted within the
9 course and scope of said agency or representation.

10 **III. JURISDICTION AND VENUE**

11 9. This Court has jurisdiction pursuant to California Constitution Article VI, section
12 10, because this case is a cause not given by statute to other trial courts.

13 10. This Court has jurisdiction over the defendants named above because they do
14 sufficient business in California, or otherwise have sufficient minimum contacts in California to
15 render the exercise of jurisdiction over them by the California courts consistent with traditional
16 notions of fair play and substantial justice.

17 11. Venue is proper in this Court because the cause arises in the City and County of
18 San Francisco where some of the violations of law have occurred.

19 **IV. STATUTORY BACKGROUND**

20 **A. The Unfair Competition Act**

21 12. California Business and Professions Code section 17200 provides that "unfair
22 competition shall mean and include unlawful, unfair or fraudulent business practice." Section
23 17203 of the Business and Professions Code provides that "(a)ny person performing or proposing
24 to perform an act of unfair competition within this state may be enjoined in any court of
25 competent jurisdiction."

26 13. Section 17206(a) provides that any person violating Section 17200 "shall be liable
27 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,
28 which shall be assessed and recovered in a civil action brought in the name of the people of the

1 State of California by the Attorney General or by any district attorney." Under section 17205,
2 these penalties are "cumulative to each other and to the remedies or penalties available under all
3 other laws of this state."

4 **B. The Federal Power Act**

5 14. The Federal Power Act ("FPA"), 16 U.S.C. §§ 824 et seq., governs sales of
6 wholesale electricity. Under the FPA, all rates and charges, changes to rates, and all contracts
7 must be filed with FERC. 16 U.S.C. § 824d. In addition, all rates and charges made, demanded,
8 or received for wholesale electricity must be just and reasonable, and any rate or charge that is not
9 just and reasonable is unlawful. 16 U.S.C. § 824d(a).

10 **V. FACTS**

11 **A. Deregulation of the California Electricity Market**

12 15. In 1996, the State of California enacted AB 1890, codified in the Public Utilities
13 Code, to restructure the California electricity market. AB 1890, inter alia, required California's
14 investor owned utilities, Pacific Gas & Electric Co. ("PG&E"), Southern California Edison
15 ("SCE"), and San Diego Gas & Electric ("SDG&E"), to sell much of their electric generation
16 capacity in order to create competition in the generation and sale of wholesale electricity in
17 California.

18 16. AB 1890 also established two new institutions: the California Power Exchange
19 ("PX") and the California Independent Systems Operator ("ISO"). The PX was established under
20 state law to operate a market for the purchase and sale of electricity for delivery during the same
21 or next day. The ISO was established under state law to manage the transmission network,
22 procure electricity during actual operation ("real-time") in order to manage imbalances between
23 demand and supply as they occur, and to maintain the reliability of the transmission grid. The
24 purchases and sales of electricity in the markets administered by the PX and ISO are for
25 subsequent retail resale (to customers of the investor owned utilities, primarily). Sales of
26 wholesale electricity also occurs outside of the PX and ISO markets.

27 17. The Federal Power Act grants FERC exclusive jurisdiction over wholesale sales of
28 electricity. 16 U.S.C. § 824. The creation and operation of the PX and ISO were approved by

1 FERC because of the role of the PX and ISO in wholesale electricity sales. Thus, the PX and ISO
2 are governed in part by tariffs filed with FERC and in part by state law. Bilateral out of market
3 sales of wholesale electricity are also regulated, in theory, by FERC and the FPA.

4 **B. Operation of the California Electricity Markets**

5 18. The investor owned utilities are responsible for providing electricity to retail
6 customers (homes, businesses, industry). Before California began purchasing wholesale
7 electricity, the investor owned utilities, to the extent their own generation was insufficient to
8 supply all of the needs of their retail customers, purchased wholesale energy from generators
9 such as Coral for resale, and made those purchases through both the PX and ISO markets. Both
10 the utilities and the generators are connected to the State's electricity grid, which is managed by
11 the ISO. Because of the nature of electricity (and the fact that it cannot be stored once
12 generated), the operation of the grid and balancing of supply and demand is a highly complex
13 operation. As a result, operation of the grid requires, inter alia, both electricity and ancillary
14 services.

15 19. Substantial portions of the electricity requirements for any given day were
16 scheduled through the PX in conjunction with the ISO. The ISO was also able to procure real-
17 time energy as needed. These markets operate in one-hour increments (and even in ten-minute
18 increments), requiring bidding, sales, and purchases for each hour or ten-minute increment.
19 Ancillary services are separate markets operated by the ISO for the delivery of electricity on
20 demand. Generators bid into ancillary services markets and, when their bids are accepted, agree
21 to provide electricity if the ISO determines, through the operation of the grid, that the electricity
22 is needed. There are a series of different ancillary services markets that are used by the ISO to
23 provide slightly different services.

24 20. Before declaring bankruptcy and ceasing operations as a result of the energy crisis,
25 the PX operated two electricity markets: the day-ahead market for delivery the next day, and the
26 day-of market for delivery the same day. While it was operating, the PX scheduled the majority
27 of electricity in the State (through the ISO as the operator of the grid).

28 21. While demand for electricity may be reasonably forecast for any given day, the

1 forecast is never exact. As a result, every day, the ISO must supplement the day-ahead and day-
2 of electricity with real time and ancillary services electricity.

3 22. The ISO does not buy and sell electricity for its own account. As part of its
4 market functions, it assigns costs and payments to market participants based on sales and
5 purchases in the various real time and ancillary services markets that the ISO administers.

6 23. In theory, through the interaction of these various markets and out of market sales,
7 electricity supply and demand remain in check, and the ISO can operate the grid with reliability.
8 The theory did not come to fruition in California.

9 **C. Breakdown of Market and Skyrocketing Prices**

10 24. For a number of reasons, including limited supply of natural gas and possible
11 manipulation of supply by generators of electricity, the wholesale price of electricity increased
12 dramatically in California in the summer of 2000. The massive price increases and the drop in
13 supply resulted in blackouts and massive economic upheaval in the state.

14 25. On January 17, 2001, Governor Davis declared a state of emergency because of
15 the energy crisis. The State suffered repeated rolling blackouts, was subject to two months of
16 stage 3 electricity emergencies requiring reduced usage, and ratepayers were hit with massive
17 increases in retail electricity charges.

18 26. The two primary investor owned utilities, which each had upstreamed billions of
19 dollars to their parent companies, were subject to retail price caps and were limited in the amount
20 of revenues they could raise from ratepayers. As a result, both SCE and PG&E incurred
21 enormous debt and defaulted on payments to both the PX and the ISO. PG&E declared
22 bankruptcy. The State, as the only available creditworthy buyer, spent billions of dollars
23 purchasing electricity to keep the lights on in California.

24 27. On December 14, 2000, the Department of Energy ordered out-of-state suppliers
25 to deliver power to California. FERC also ordered both soft and hard price caps in an attempt to
26 control prices charged by generators for electricity in the State.

27 28. Prices for wholesale electricity soared. In 1999, Californians paid approximately
28 \$7 billion for energy. In 2000 and 2001, Californians paid approximately \$27 billion for

1 approximately the same quantity of energy.

2 29. Meanwhile, generators of electricity, including Coral, enjoyed massive, historic
3 profits.

4 **D. FERC's Determination of Unjust, Unreasonable, Unlawful Prices**

5 30. In a November 1, 2000 order (and repeated and reaffirmed in orders dated April
6 19, 2001, July 25, 2001, and December 19, 2001), FERC found that the "electric market structure
7 and market rules for wholesale sales of electric energy in California were seriously flawed and that
8 these structures and rules, in conjunction with an imbalance of supply and demand in California,
9 have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-
10 term energy. . . ." *San Diego Gas & Electric Co., et al.*, 93 FERC ¶ 61,294 (2000).

11 31. The FPA, at 16 U.S.C. § 824d(a), declares unlawful any unjust and unreasonable
12 rate or charge for wholesale electricity.

13 32. In its July 25, 2001 and December 19, 2001 Orders (and in a refund proceeding
14 currently before FERC), FERC determined a formula for the maximum just and reasonable price,
15 based on the heat rate of any particular generating unit times the gas price plus six dollars times
16 1.1. All charges above the formula rate are unjust and unreasonable.

17 33. Based on the FERC formula and the calculation done by the ISO, Coral has
18 exceeded the just and reasonable price on thousands of separate occasions, in violation of 16
19 U.S.C. § 824d.

20 **E. Coral's Actions and Profits**

21 34. Through its scheduling coordinators, Coral sold wholesale electricity into the
22 California markets. It operated in all of the markets, including day-ahead, hour-ahead, real-time,
23 and ancillary services. It made thousands of electricity transactions in those markets starting in
24 early 2000 and continuing through 2001.

25 35. Under the FPA, all rates and charges, all changes to rates and charges, and all
26 contracts must be filed with FERC. 16 U.S.C. § 824d; 18 C.F.R. § 35.1.

27 36. Since 1998, Coral has entered into thousands of separate transactions for the sale
28 of wholesale electricity.

37. Coral has never filed its rates, charges, changes to rates and charges, or its contracts with FERC. Instead, it filed a statement with FERC that it will charge rates as agreed upon by Coral and the purchaser. In addition, Coral files quarterly summaries of sales (with limited information) after the fact. Coral's failure to file rates as required by the FPA deprived the public, power purchases, ratepayers, and FERC of notice and information necessary to make informed decisions about rates.

38. Regardless of whether Coral withheld supply of electricity, exercised market power, or manipulated the price of electricity or the electricity markets in any other way, Coral charged rates in the California electricity markets that were unjust, unreasonable, and therefore illegal, and did so on tens of thousands of occasions starting in early 2000 and continuing through 2001. And on tens of thousands of occasions, it failed to file the rates it charged, in violation of 16 U.S.C. § 824d and 18 C.F.R. § 35.1.

FIRST CAUSE OF ACTION

UNFAIR BUSINESS COMPETITION
(Business and Professions Code § 17200 et seq.)

39. Paragraphs 1 through 38 are realleged and incorporated as if fully set forth herein.

40. Beginning on an exact date unknown to plaintiffs, but within four years preceding the filing of this complaint, defendants have engaged in acts of unfair competition as defined in Business and Professions Code section 17200, as follows: Each and every sale or purchase of wholesale electricity by defendants for which defendants failed to file the charge, rate, price or contract reflecting the terms of the sale or purchase, as required by the Federal Power Act, FPA regulations, and FERC orders setting forth filing requirements. The number of such sales or purchases is in the thousands;

41. Said violations render each defendant liable to plaintiffs for civil penalties according to proof of up to \$2,500 per day for each violation, and other equitable relief as appropriate.

SECOND CAUSE OF ACTION

UNFAIR BUSINESS COMPETITION
(Business and Professions Code § 17200 et seq.)

42. Paragraphs 1 through 41 are realleged and incorporated as if fully set forth herein.

43. Beginning on an exact date unknown to plaintiffs, but within four years preceding the filing of this complaint, defendants have engaged in acts of unfair competition as defined in Business and Professions Code section 17200, as follows: Each and every rate, charge, or price charged by defendants in violation of the Federal Power Act, 16 U.S.C. § 824d(a), as unfair, unreasonable, and therefore unlawful;

44. Said violations render each defendant liable to plaintiffs for civil penalties according to proof of up to \$2,500 per day for each violation, and other equitable relief as appropriate.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court:

1. Award civil penalties according to proof;
2. Award plaintiffs their costs of suit;
3. Award plaintiffs their attorneys fees;
4. Grant such other and further relief as the court deems just and proper.

Dated: April 9, 2002

Respectfully submitted,
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